

Murphy & Vander Salm LLP

46 Wachusett Street • Worcester, Massachusetts 01609

PHONE 508.425.6330

FAX 508.536.0834

EMAIL vandersalm@mvsllp.com

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED

(certified mail # 7011 1570 0000 2674 8517)

March 4, 2016

Curt Spalding, Regional Administrator
EPA Region 1 – New England
5 Post Office Square, Suite 100
Mail Code: ORA
Boston, MA 02109-3912

RECEIVED

MAR 07 2016

OFFICE OF THE REGIONAL ADMINISTRATOR

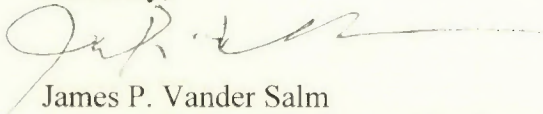
**Re: Notice of Intent to Sue for Violations of the Federal Clean Water Act at
the Arboretum Village Estates Construction Development in Worcester, MA**

Dear Mr. Spalding,

Pursuant to 40 CFR § 135.2(a)(1), please find enclosed one copy of my client's notice of intent to sue Robert H. Gallo, Steven A. Gallo, Arboretum Village, LLC, and Gallo Builders, Inc. for violations of the Federal Clean Water Act.

Thank you for your time.

Sincerely,



James P. Vander Salm

Attorney for The Blackstone Headwaters Coalition, Inc.

Murphy & Vander Salm LLP

46 Wachusett Street • Worcester, Massachusetts 01609

PHONE 508.425.6330

FAX 508.536.0834

EMAIL vandersalm@mvsllp.com

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED

March 4, 2016

Robert H. Gallo, Manager and Registered Agent
Arboretum Village, LLC
31 Gallair Circle
Holden, MA 01520
(certified # 7011 1570 0000 2674 8487)

Steven A. Gallo, President
Gallo Builders, Inc.
31 Gallair Circle
Holden, MA 01520
(certified # 7011 1570 0000 2674 8494)

Robert Osol, Registered Agent
Gallo Builders, Inc.
31 Gallair Circle
Holden, MA 01520
(certified # 7011 1570 0000 2674 8500)

**Re: Notice of Intent to Sue for Violations of the Federal Clean Water Act at
the Arboretum Village Estates Construction Development in Worcester, MA**

Dear Sirs,

This office represents The Blackstone Headwaters Coalition, Inc. ("BHC"), a non-profit citizens' organization whose mission is to restore and protect water quality and wildlife habitat in the Blackstone River, and to advocate for sound land use in the Blackstone River watershed. The purpose of this letter is to inform you that the BHC intends to file suit against Robert H. Gallo, Steven A. Gallo, Arboretum Village, LLC, and Gallo Builders, Inc. (collectively, "you") for violations of the Federal Clean Water Act ("CWA"), 33 U.S.C. § 1251 *et seq.*, at the Arboretum Village Estates construction development (the "Site") in Worcester, Massachusetts. The CWA affords citizens a right to sue persons who are violating the statute. *See generally* 33 U.S.C. § 1365. A citizen who intends to file such a suit must give the prospective defendant at least 60 days of notice prior to filing. *See* 33 U.S.C. § 1365(b)(1)(A). This letter constitutes that notice.

RECEIVED

MAR 07 2016

OFFICE OF THE REGIONAL ADMINISTRATOR

Investigations by the BHC have revealed that you are violating the CWA at the Site by failing to obtain and adhere to the requirements of a National Pollutant Discharge Elimination System (“NPDES”) permit—that is, the General Permit for Discharges from Construction Activities (“Construction General Permit,” or “CGP”).¹ As you know, the CGP is issued by the United States Environmental Protection Agency (“EPA”) pursuant to the CWA. Its purpose is to minimize water pollution from construction developments, particularly sediment pollution. Operators of construction developments such as the Site, which disturb at least one acre of land and which discharge pollutants from point sources to waters of the United States, must obtain CGP coverage, and must adhere to the terms of the CGP. *See* 33 U.S.C. § 1311(a) (prohibiting the discharge of any pollutant by any person except in compliance with, *inter alia*, 33 U.S.C. § 1342); 33 U.S.C. § 1342 (establishing NPDES permit program); 40 C.F.R. §§ 122.26(b)(14)(x), 122.26(b)(15)(i), 122.26(c) (EPA regulations mandating NPDES permit coverage for construction developments disturbing one or more acres of land). Any violation of the CGP is a violation of the CWA, for which a citizen may sue. *See* 33 U.S.C. §§ 1365(a)(1), 1365(f)(6).

Your unlawful failures to obtain and adhere to the terms of the CGP are detailed below.

I. Unlawful Failure by Gallo Builders, Inc. to Obtain CGP Coverage

Under the CGP, every operator of a site must obtain CGP coverage. *See* CGP Part 1.1(a). An operator of a site is either (1) a party with operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications, or (2) a party with day-to-day operational control of those activities at a project that are necessary to ensure compliance with CGP conditions (e.g., the party is authorized to direct workers at a site to carry out activities required by the CGP). *Id.*

According to the EPA’s searchable database of CGP permittees,² only an entity named “Arboretum Estates, LLC” has obtained CGP coverage for itself as operator of the Site, under NPDES Permit Tracking No. MAR12A693. Because there does not appear to be any legal entity named “Arboretum Estates, LLC,” it is assumed here that the entity “Arboretum Village, LLC” was intended to be named Site operator.³

Regardless of the role of Arboretum Village, LLC, it is apparent that Gallo Builders, Inc. is in fact a Site operator. Gallo Builders’ President Steven A. Gallo identifies himself with Gallo

¹ References in this letter to the CGP are to the 2012 version of the CGP. The 2012 CGP can be found on line at: <http://water.epa.gov/polwaste/npdes/stormwater/EPA-Construction-General-Permit.cfm>.

² https://ofmpub.epa.gov/apex/aps/f?p=CGP_2012:HOME (viewed March 1, 2016).

³ According to the website of the Massachusetts Secretary of State, both “Arboretum Village, LLC” and “Arboretum Estates, Inc.” are legal entities (<http://corp.sec.state.ma.us/corpweb/CorpSearch/CorpSearch.aspx>, viewed March 1, 2016). Each of these companies is used in connection with transactions involving the Site, the former serving as a shell for holding Site property. It is assumed here that you intended to name Arboretum Village, LLC as Site operator because this is the name generally used on your regulatory filings with the City of Worcester.

Builders in his communications about the Site with regulatory authorities. *See Exhibit 1* (12/29/15 email of Steven A. Gallo to City of Worcester engineer Edmund T. Kochling re. Kochling's observation of stormwater being discharged into sewer main at Bittersweet Boulevard); *Exhibit 2* (7/31/15 letter of Steven A. Gallo on Gallo Builders letterhead to the City of Worcester's Planning and Regulatory Services Division re. site plan changes to Bittersweet Boulevard). Evidently, Gallo Builders has both day-to-day operational control over activities at the Site and operational control over the Site's construction plans and specifications. Accordingly, Gallo Builders must obtain CGP coverage. Its failure to obtain CGP coverage is in violation of the CWA.

II. Violations of the CGP

During storms on January 10, February 3, February 16, and February 24, 2016, silt-laden stormwater has been observed flowing from disturbed areas of the Site into the Site's stormwater drainage system, and from there to waters of the United States.⁴ The silt is migrating from exposed areas of soil adjacent to Bittersweet Boulevard, which is currently under construction. *See Exhibit 3* (photograph of construction area on 1/10/16); *Exhibit 4* (photograph of construction area on 2/16/16). It migrates from these exposed areas into two catch basins on Bittersweet Boulevard. *See Exhibit 5* (photograph of silt-laden water flowing through earthen berm onto Bittersweet Boulevard on 1/10/16); *Exhibit 6* (photograph of silt-laden water flowing through and around eroded remnant of earthen berm onto Bittersweet Boulevard on 2/16/16); *Exhibit 7* (photograph of silt-laden water entering Bittersweet Boulevard catch basin on 1/10/16); *Exhibit 8* (photograph of silt-laden water submerging area of Bittersweet Boulevard catch basins on 2/16/16). From those catch basins, the silt is conveyed underground to an outfall pipe that emerges from the earth below a lower road of the Site called Honeysuckle Road. *See Exhibit 9* (photograph of silt-laden water emerging from outfall on 1/10/16); *Exhibit 10* (photograph of silt-laden water emerging from outfall on 2/3/16). At the outfall, the silt is discharged to an unnamed stream that runs southward between Honeysuckle Road and Sophia Drive. *See Exhibit 11* (photograph of silt-laden water cascading down from outfall into stream on 1/10/16); *Exhibit 12* (photograph of silt-laden stream on 1/10/16).⁵ This stream goes under Sophia Drive (*Exhibit 14*, 1/10/16) before emptying into another stream that flows southward through the town of Auburn for approximately one kilometer before emptying into the Worcester Flood Diversion Channel. The Worcester Flood Diversion Channel, in turn, flows southeastward through the towns of Auburn and Millbury into the Blackstone River.

⁴ In addition to photographs, the BHC possesses extensive video evidence of Site conditions and discharges on these days.

⁵ Silt-laden stormwater has also been observed discharging into this stream from an outfall located below Sophia Drive, approximately 100 feet to the west of the outfall below Honeysuckle Road. *See Exhibit 13* (2/3/16). It is not clear whether this silt is coming from exposed areas of the Site or from residual silt in the Site's stormwater system.

As underscored by these discharges of silt-laden stormwater from the Site, you are violating numerous conditions of the CGP. These violations, all of which are ongoing, include the following:

1. Failure to take into account the following factors in designing your stormwater controls, in violation of Part 2.1.1.2 of the CGP:
 - i. The amount, frequency, intensity, and duration of precipitation at the Site.
 - ii. The nature of stormwater runoff at the site, including factors such as expected flow from impervious surfaces, slopes, and site drainage features.

Your failure to take these factors into account is evident when silt-laden stormwater runs off of exposed areas of the Site and into the Bittersweet Boulevard catch basins. The one “stormwater control” that you have sometimes deployed to check the flow of stormwater from the exposed area of the Site at the southern end of Bittersweet Boulevard, an earthen berm, is rendered largely useless by a pipe that runs through it.⁶ See Exhibit 5. At other times, this berm is absent, and enormous volumes of silt-laden stormwater are left to run completely unchecked into the catch basins.⁷ See Exhibit 4, 8. In any event, the berm is not fit to hold back the amount of stormwater that flows up against it during heavy storms. See Exhibit 6.

2. Failure to use good engineering practices in installing your stormwater controls, in violation of Part 2.1.1.3(b) of the CGP. As mentioned above, by piping silt-laden water through it, you are defeating the ostensible purpose of the centerpiece of your stormwater control program, the defective earthen berm on Bittersweet Boulevard.
3. Failure to ensure that all erosion and sediment controls remain in effective operating condition, and are protected from activities that would reduce their effectiveness, in violation of Part 2.1.1.4(a) of the CGP. This failure is evident in the ineffectual earthen berm.
4. Failure to inspect, repair, and/or modify your erosion and sediment controls, in violation of Part 2.1.1.4(b) of the CGP. This failure is evident in the continuing absence of effective erosion and sediment controls at the Site, notwithstanding your repeated silt-laden discharges.

⁶ To the degree that the berm is meant to create a settling basin, with sediment settling out before stormwater passes through the pipe, it is failing. See Exhibit 5.

⁷ As evidenced by the silt-laden discharges from the outfall below Honeysuckle Road, the silt sacks in the Bittersweet Boulevard catch basins do not effectively filter silt.

5. Failure to install sediment controls along those perimeter areas of the site that will receive stormwater from earth-disturbing activities, in violation of Part 2.1.2.2(a) of the CGP. Again, the earthen berm on Bittersweet Boulevard is not controlling sediment. Meanwhile, no sediment barriers are installed along the exposed western side of Bittersweet Boulevard. *See Exhibit 15* (western side of Bittersweet Boulevard on 1.10.16); *Exhibit 16* (western side of Bittersweet Boulevard on 2.3.16).
6. Failure to design, install, and maintain effective pollution prevention measures in order to prevent the discharge of pollutants, in violation of Part 2.3 and Part 2.3.2 of the CGP. *See ¶¶ 1-5 supra.*
7. Failure to inspect, repair, and/or modify your pollution prevention controls in a timely manner, in violation of Part 2.3.2 of the CGP. You must make necessary repairs immediately when discovered—or at most, within seven days. *See ¶¶ 1-5 supra.*
8. Failure to have a qualified person inspecting your erosion and sediment controls, in violation of Part 4.1.1 of the CGP. A qualified inspector would recognize that channeling silt-laden stormwater through an intermittently deployed and highly erodible earthen berm does not constitute effective erosion and sediment control. *See ¶¶ 1-5 supra.*
9. Failure to inspect your erosion and sediment controls every 7 days (or alternatively, every 14 days, and within 24 hours of every day on which .25 inches or more of rain falls), in violation of Part 4.1.2 of the CGP. It is inferable that no person is regularly inspecting your erosion and sediment controls, as the site's erosion and sediment control deficiencies are chronic, and are plainly evident during every storm. *See ¶¶ 1-5 supra.*
10. Failure to inspect all stormwater controls and pollution prevention measures, in violation of Part 4.1.5.2 of the CGP. *See ¶¶ 1-5 supra.*
11. Failure to inspect all areas where stormwater typically flows within the site, in violation of Part 4.1.5.4 of the CGP. *See ¶¶ 1-5 supra.*
12. Failure to inspect all points of discharge from the site, in violation of Part 4.1.5.5 of the CGP. Given the fact that the site's stormwater discharges are regularly laden with silt, and that no modifications to the Site's erosion and sediment controls are made, it is inferable that the Site's discharge points are not being inspected.
13. Failure to inspect whether all erosion and sediment controls and pollution prevention controls are installed, operational, and working as intended to minimize pollutant discharges, in violation of Part 4.1.6.1 of the CGP. *See ¶¶ 1-5 supra.*

14. Failure to initiate corrective action when failures of erosion and sediment control are observed, in violation of Part 4.1.6.7 of the CGP. *See ¶¶ 1-5 supra.*
15. Failure to immediately take all reasonable steps to minimize or prevent the discharge of sediment from the Site, upon discovering that sediment is being discharged, in violation of Part 5.2 of the CGP. *See ¶¶ 1-5 supra.*
16. Failure to install new or modified erosion and sediment controls—and, failure to repair existing controls—within 7 days of discovering that existing controls are not operating effectively, in violation of Part 5.2.1.1 of the CGP. *See ¶¶ 1-5 supra.*
17. Failure to train site personnel in the design, installation, maintenance, and/or repair of stormwater controls, in violation of Part 6 of the CGP. Trained personnel would recognize the acute lack of effective erosion and sediment controls on the site. *See ¶¶ 1-5 supra.*
18. Failure to maintain all sedimentation barriers in good repair, failure to prevent deposition of sediment in resource areas and storm drains, failure to inspect erosion controls daily, failure to immediately control any erosion problems that occur at the Site, and failure to immediately notify the Worcester Conservation Commission (“WCC”) of such problems,⁸ in violation of Condition # 18 of the WCC’s Amended Order of Conditions for the Site (issued August 18, 2015).⁹ *See ¶¶ 1-5 supra.*
19. Failure to securely establish all erosion and sediment controls so as to prevent any sediment from seeping under, through, or over them, in violation of Condition # 26 of the WCC’s Amended Order of Conditions. *See ¶¶ 1-5 supra.*
20. Failure to file written monthly construction reports with the WCC containing an evaluation of all existing stormwater management devices and recommendations for areas found to be deficient, in violation of Condition # 30 of the WCC’s Amended Order of Conditions.¹⁰
21. Failure to monitor, maintain, and adjust all erosion and sediment controls throughout the duration of the project as required to prevent adverse impacts to resource areas, in violation of Condition # 36 of the WCC’s Amended Order of Conditions. *See ¶¶ 1-5 supra.*

⁸ A review of Conservation Commission files conducted by undersigned counsel on March 1, 2016, revealed no notification of erosion and sediment control problems on Bittersweet Boulevard.

⁹ Orders of Conditions by Conservation Commissions are incorporated by the CGP at Part 9.1.1.4.

¹⁰ Undersigned counsel’s review of the Conservation Commission’s files (n.8 *supra*) did not reveal such monthly evaluations and recommendations.

Each of the above violations of the CGP, in addition to your failure to obtain CGP coverage for Gallo Builders, Inc., is a violation of the CWA. For each violation, you are liable under the CWA for civil penalties of up to \$37,500 per day. Each day that a violation persists constitutes a separate violation. *See* 33 U.S.C. § 1319(d) (violators of NPDES permit conditions shall be subject to penalties of up to \$25,000 per day per violation); 40 C.F.R. § 19.4 (adjusting civil penalty amount for inflation to \$37,500 as of January 12, 2009). Civil penalties are mandatory for CWA violations—that is, a court must impose a penalty, once a violation is found. *See* Natural Resources Defense Council v. Southwest Marine, Inc., 236 F.3d 985, 1001 (9th Cir. 2000); Catskill Mountains Chapter of Trout Unlimited, Inc., v. City of New York, 244 F.Supp.2d 41, 48 n.6 (N.D.N.Y. 2003). As for the amount of penalties, critical factors for a court to consider are whether the offender has a history of offending conduct, and whether the offender has made a good-faith attempt to comply with the law. *See* 33 U.S.C. § 1319(d). Your longstanding indifference to erosion and sediment control, as evidenced by previous enforcement actions against you by the Worcester Conservation Commission and the Massachusetts Department of Environmental Protection, will warrant a demand for maximum penalties.

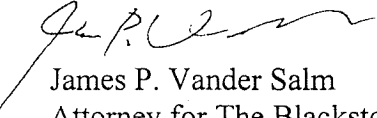
Besides civil penalties, the BHC will seek from the court a declaration that Gallo Builders, Inc. must obtain CGP coverage, and an injunction against any further violations of the CGP at the Site, including such violations as become apparent after this letter is sent. The BHC will also seek an order that you restore all resource areas that your silt-laden discharges have damaged. *See* U.S. Public Interest Research Group v. Atlantic Salmon of Maine, LLC, 339 F.3d 23, 31-34 (1st Cir. 2003) (holding that trial court in its broad remedial discretion could order defendant to remedy damage caused by CWA violations). Additionally, the BHC will be entitled to an award of its litigation costs, including attorney fees and expert witness fees. *See* 33 U.S.C. § 1365(d).

I stress that, besides Arboretum Village, LLC and Gallo Builders, Inc., Steven A. Gallo and Robert H. Gallo will be named as defendants in the BHC's suit. By virtue of their authority to control operations at the Site, the Gallos are personally liable under the CWA as "responsible corporate officers." *See, e.g.,* Stillwater of Crown Point Homeowner's Association, Inc. v. Kovich, 820 F.Supp.2d 859, 889-893 (N.D. Ind. 2011); U.S. v. Osborne, No. 1:11-cv-1029, 2012 WL 1096087, at *3 (N.D. Ohio March 30, 2012); Jones Creek Investors, LLC v. Columbia County, Ga., No. cv 111-175, 2013 WL 1338238, at *13-15 (S.D. Ga. March 28, 2013); City of Newburgh v. Sarna, 690 F.Supp.2d 136, 159-163 (S.D.N.Y. 2010); Puget Soundkeeper Alliance v. Tacoma Metals Inc., No. C07-5227-RJB, 2008 WL 3166767, at *12-14 (W.D. Wash. August 3, 2008); Northern Cal. River Watch v. Oakland Maritime Support Services, Inc., No. C10-03912-CW, 2011 WL 566838, at *3-4 (N.D. Cal. February 14, 2011).

Please address all communications concerning this matter to me at the address and telephone number listed at the top of this letter. During the 60-day notice period, the BHC will be amenable to discussions that might avoid the necessity of litigation. If you wish to pursue such discussions, please have your attorney contact me within 20 days, to provide ample time for

negotiating a resolution to this matter before 60 days have passed. The BHC does not intend to delay the filing of a Complaint if a resolution has not been reached by that time.

Sincerely,


James P. Vander Salm
Attorney for The Blackstone Headwaters Coalition, Inc.¹¹

Cc: Curt Spalding, Regional Administrator
EPA Region 1 – New England
5 Post Office Square, Suite 100
Mail Code: ORA
Boston, MA 02109-3912
(certified mail # 7011 1570 0000 2674 8517)

Gina McCarthy, Administrator
US EPA Headquarters
William Jefferson Clinton Building
1200 Pennsylvania Ave., N.W.
Mail Code: 1101A
Washington, DC 20460
(certified mail # 7011 1570 0000 2674 8524)

Martin Suuberg, Commissioner
Massachusetts Department of Environmental Protection
1 Winter Street
Boston, MA 02108
(certified mail # 7011 1570 0000 2674 8531)

¹¹ This Notice is provided by undersigned counsel on behalf of Peter G. Coffin, Coordinator for the BHC, whose address and telephone number are:

Peter G. Coffin, Coordinator
The Blackstone Headwaters Coalition, Inc.
414 Massasoit Road
Worcester, MA 01604
tel. 508.753.6087

Smith, Michelle

From: Kochling, Edmund T.
Sent: Wednesday, December 30, 2015 10:04 AM
To: Lyford, Nicholas J.; Smith, Michelle; Davis, Debra; Holden, Michael P.
Subject: FW: Immediate Attention Required (Bittersweet Boulevard)
Attachments: Arboretum IV Covenant_48165 248.pdf

FYI

Just want to make sure that you are in the loop.

From: Kochling, Edmund T.
Sent: Wednesday, December 30, 2015 10:00 AM
To: 'Steven A. Gallo'
Cc: Kelly, John
Subject: RE: Immediate Attention Required (Bittersweet Boulevard)

Hi Steve,

As you know, the City has to pay for treating sewage and it is not cheap. This is very disappointing and the matter is being reviewed. I was tasked with verifying that the infrastructure for this phase of Bittersweet Blvd. has been inspected and approved. I sent you an e-mail on 12-2-15 that indicated some of the concerns that I had at that time (I will forward it to you). I have not received any information from you addressing those issues. There is also a "Declaration of Restrictive Covenants" (Attached) for this project. Item # 4 spells out that the infrastructure needs to be installed and approved before you can build on the lots. Here are a few more issues that need to be cleared up.

- I was not able to verify that the sewer, drain and water mains have been approved for the section of Bittersweet Blvd.
- I was not able to find a copy of the required bond in the DPW file.

It is important to remember that it is in everyone's best interest to make sure that all of the issues are addressed before moving forward with this project. If you have a copy of the bond or approvals for infrastructure for this section of Bittersweet Blvd please send them to me so that we can expedite the process.

Don't hesitate to contact me if you have any questions?

Thanks,

Ed

From: Steven A. Gallo [<mailto:SGallo@gallobuilders.com>]
Sent: Tuesday, December 29, 2015 4:07 PM
To: Kochling, Edmund T.
Cc: Kelly, John
Subject: RE: Immediate Attention Required (Bittersweet Boulevard)

Hello Ed,

Please see attached photo of the manhole in question. You can see that it is now capped. This was done last Thursday, the day you were onsite. I believe this addresses your issue.

Also, Deb Davis told me that you had put a "hold" on Bittersweet. I really don't have any idea what that means or why you even do such a thing. I would like to remind you that the roadway is approved, constructed, and bonded in the section I am seeking permits. There is absolutely no reason for your intervention in the permitting process. There is nothing that says everything has to be perfect up the minute. You are grossly overreaching on this.

Thanks,
Steve

Steven A. Gallo
Gallo Builders, Inc.

From: Kochling, Edmund T. [<mailto:KochlingE@worcesterma.gov>]
Sent: Thursday, December 24, 2015 10:50 AM
To: Scott Morrision <smorrison@ecotecinc.com>; Smith, Michelle <SmithM@worcesterma.gov>
Cc: Steven A. Gallo <SGallo@gallobuilders.com>; Lyford, Nicholas J. <LyfordN@worcesterma.gov>
Subject: RE: Immediate Attention Required (Bittersweet Boulevard)

Hi Steve,
I was just up at Bittersweet Boulevard and discovered that your make shift detention basin in the road is not holding storm water because it is discharging directly into the sewer main. I spoke to a couple of the guys on site and they said that they would try to plug the pipe. Can you please follow up on this immediately. Discharging silt laden storm water into the sewer system is unacceptable. I would like to discuss this issue with you on Monday if you are available.

Ed

From: Scott Morrision [<mailto:smorrison@ecotecinc.com>]
Sent: Thursday, December 24, 2015 9:07 AM
To: Smith, Michelle
Cc: Kochling, Edmund T.; Steven Gallo
Subject: RE: Bittersweet Boulevard, Worcester

Hi Michelle,
Now that I know that the Conservation Commission is not the cause for the permit hold, I am not overly concerned about the issuance of the Amended Order. So please send it when you have a chance.

Merry Christmas and Happy New Year.

Thanks again,
Scott

From: Smith, Michelle [<mailto:SmithM@worcesterma.gov>]
Sent: Wednesday, December 23, 2015 5:41 PM
To: Scott Morrision
Cc: Kochling, Edmund T.; Steven Gallo
Subject: RE: Bittersweet Boulevard, Worcester

Hi Scott –

Please follow up with Ed directly about the permit hold, I believe the hold is something specific to DPW&P but I'll let Ed discuss this with you since he'll know better than I.



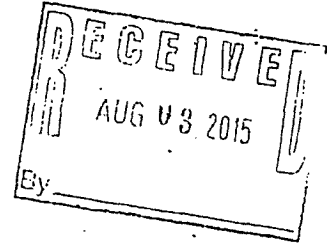
31 Gallair Circle
Holden, MA 01520
Phone 508-829-0676
Fax 508-829-0681
info@gallobuilders.com

July 31, 2015

Stephen S. Rolle
Assistant Chief Development Officer -
Planning & Regulatory Services Division
City of Worcester
Executive Office of Economic Development
Worcester City Hall
456 Main Street - Room 404
Worcester, MA 01608

RE: Site Plan Changes
Bittersweet Blvd. - Slope "A"

FILE



Dear Mr. Rolle:

We are in receipt of the Definitive Site Plan Decision for Arboretum Phase IV - Bittersweet Blvd. Lots 81-86. This letter is to help clarify the plan changes made per the Boards request. Each of the numbered items below corresponds directly with the comments contained in the Decision and are shown in gray text. The explanation and/or description of the changes are directly below each numbered or lettered comment and are in blue text.

1. *That the site shall be operated in substantial accordance with the final revised approved plans on file with the Division of Planning and Regulatory Services;*

No comment or plan change necessary.

2. *That the applicant shall submit eight (8) copies of revised plans reflecting all conditions of approval, including those listed below, to the Division of Planning & Regulatory Services (DPRS) prior to the release of the decision:*

8 copies of the revised plan were submitted.

- a. *Provide and label information pertaining to the easement between lots 82L (#24 Bittersweet Boulevard) and 83R (#26 Bittersweet Boulevard) on the plan (Plan Book 885 and Page 81);*

The drainage easement between Lots 82L and 83R has been labeled. (Sheets 2 through 6)

- b. *Revise the zoning classification summary (Sheet 8) to provide accurate specifications for frontage (35ft. per lot), the number of DUs (1 DU per lot),*

for each proposed lot, and reflect the use as single-family semi-detached dwellings;

The Zoning Classification Chart has been revised to show 35' per Lot and Single Family Semi-detached Dwellings. (Sheet 8)

- c. *Revise the Proposed Subdivision Road Layout and Key Plans to modify the dashed line width, used to distinguish constructed roadways from proposed roadways, in order to show greater separation between dashes so the difference is discernable at the scale shown;*

The line type has been changed to distinguish constructed roadway from proposed roadways on the Key Plan. (Sheets 1 through 3)

- d. *Revise the locus plan to show all the streets approved and constructed to date, including Honeysuckle Road, Sophia Drive, a portion of Bittersweet Boulevard, etc.;*

The locus plan has been revised to show all approved and constructed streets. (Sheet 1)

- e. *Provide the location of the zero-lot lines on each sheet of the plans (i.e. Sheets 6 & 7 to reflect this);*

The zero-lot lines have been added to the plan. (Sheets 3 through 7)

- f. *Label "Lot 81" consistent with the approved Subdivision Plan (i.e. "Lot 81L" and "Lot 81R");*

Lot 81L&R is not part of this filing and is shown in a consistent manner as other lots on the plan that are not part of this filing. (Sheets 3 through 6)

- g. *Revise the legend to accurately reflect all symbols shown on the plan (i.e. catch basins, erosion control barriers, etc.);*

The legend has been revised to reflect all the symbols shown on the plan. However, not all symbols in the legend are used on every sheet. (Sheets 1 through 6)

- h. *Label Honeysuckle Road on Plan Sheets 2 and 5;*

Honeysuckle Road is labeled. (Sheets 2 & 5)

- i. *Include all revision iterations and associated release dates on Plan Sheet 1 (e.g. 4/29/15, 4/30/2015, 5/1/2015, etc.);*

The revision dates have been modified on all sets to include all the revision. (All Sheets)

- j. *Revise "Site Plan Notes" Note 8 (on Plan Sheets 2-7) to indicate: "That all work in public rights-of-way, easements with respect to utilities, and streets conforms to the standards contained in the City of Worcester, Department of*

Public Works & Parks, Engineering Division, Construction Management Section, STANDARD SPECIFICATIONS & DETAILS, most recent edition";

This note was added to Note #2. Although, we would like to note that no work in public ROW is proposed as part of this filing. (Sheets 2 through 7)

- k. Clearly label the proposed grades of Slope A to indicate that the proposed re-grading (shown on Plan Sheets 6 & 7) will be a maximum of 2.5H:1V, stabilized as indicated in the detail provided on Plan Sheet 7 (with the exception of a small portion on lots 86 L & 86 R);*

The proposed grades of Slope A have been clearly labeled as 2.5H:1V. (Sheets 6 & 7)

- l. Provide additional information regarding the extent and location of areas proposed with loam & seed and label said areas on the plan;*

The note: "All disturbed areas on slope A which are 2.5:1 or less to be loamed & seeded" was added to the plan. (Sheet 6)

- m. Provide a detail for the proposed retaining wall, showing placement and footing within the sloped area;*

A detail of the proposed retaining wall has been added to the plan. (Sheet 7)

- n. Provide the location of the two types of existing soils on Plan Sheet 2, as indicated in Note 11 (Note: previously shown on the plan and removed with the most recent revisions);*

The soil types are shown on the plan. (Sheet 2) Note #11 was moved and is now Note #10. (Sheets 2 through 7)

- o. Revise Plan Sheet 6 & 7 to show the top and bottom of wall measurements for the retaining walls on all lots at the northernmost and southernmost points and for the wall on Lot 85L & 86R at the easternmost and westernmost points;*

The elevation of the retaining wall is shown at the points where it intersects the lot lines. (Sheets 6 & 7)

- p. Revise the rear yard setbacks on sheets 4 and 8 to be accurate. This dimension is calculated from the outermost point of the proposed structure, including the proposed decks shown in the rear-yards of the proposed lots;*

The rear yard setbacks for the buildings have been dimensioned and labeled on the plan. (Sheets 4 & 8)

- q. Revise the stairs shown on the rendering so that the rendering and plans are consistent as the rendering (Plan Sheet 8) shows stairs off the back (west) of the decks, while the stairs shown on the plan are located off the side (north or south) of the decks;*

The stairs have been changed on both the plan view and the building renderings to be correct and match. (Sheets 4 through 8)

- r. *Provide the locations of the two required parking spaces for each proposed dwelling unit on Plan Sheet 4 in order to show compliance with the Ordinance (Note: previously shown on the plan and removed with the most recent revisions);*

The parking spaces are shown on the plan (Sheet 4)

- s. *Contact the Worcester Fire Department to coordinate the placement of fire hydrants and depict the location(s) on the plans (See Fire Department comments of May 6, 2015 - Exhibit D of the staff review memo, last updated May 6, 2015), and add the location of the existing hydrant on the easterly side of Bittersweet Blvd on Plan Sheets 2 & 6;*

The location of the hydrants was originally communicated to me by the Worcester Water Department in December of 2011. Please see attached e-mail from Michael Daigneault. The locations were to be at or near sta's 2+50, 7+50, & 12+30 on Bittersweet Blvd. The hydrant at sta 2+50 is existing (actually at sta3+25) and shown on the plan. (Sheet 5) The other two hydrants are in future phases. We have also been in contact with the Worcester Fire Department and they have told us the location of the hydrant at sta 2+50 is acceptable.

- t. *Provide a means of turnaround to be constructed of asphalt pavement and located completely within the rights-of-way which satisfies the needs of the Worcester Fire Department (WFD) and Department of Public Works and provide a detail for said construction materials;*

A temporary paved turnaround, within the right of way, is shown on the plan. (Sheets 4 through 7)

- u. *Include the location of the proposed means of turnaround on Plan Sheets 4-7;*

Same as bullet letter "t" above.

- v. *Revise the note "edge of pavement" on Plan Sheets 6 & 7 to state "existing" edge of pavement;*

The "Existing Edge of Pavement" is shown on the plan. (Sheet 6)

- w. *Label the proposed edge of pavement;*

The proposed edge of pavement on Bittersweet Blvd. is shown on the plan. (Sheets 6 & 7)

- x. *Provide a detail for any new proposed fencing;*

The only new proposed fencing is a 4' chain link fence near the top of the retaining wall. This fence is shown on the plan and on the Stabilization Treatment Detail (Sheets 6 & 7)

- y. *Label any existing vegetation and/or rock pilings or indicate that none exist;*

There is no vegetation or rock pilings currently located in the area of this Site Plan filing. A note (Note #11) has been added stating this fact. (Sheet 2 through 7)

- z. *Provide one minimum 3" caliper shade tree along Bittersweet Blvd for each of the proposed ten dwelling units (Note: previously shown on the plan and removed with the most recent revision);*

The Typical Tree Planting Detail shows 2" caliper trees and specifies the locations to be planted. (Sheet 4) The tree locations are also shown on the plan. (Sheets 4 through 6)

- aa. *Revise the "2.5:1 Stabilization Treatment" detail (Plan Sheet 7) to match the plan.*

The detail shows a 5 ft. to 10 ft. flat area near the property line with abutters, whereas the erosion control plans (Plan Sheets 6 & 7) show a sloped area;

The detail does NOT show a flat area near the property line. (Sheet 7)

- bb. *Update the "2.5:1 Stabilization Treatment" detail (on Plan Sheet 7) to include the proposed curtain drain;*

The detail shows the proposed curtain drain. (Sheet 7)

- cc. *Provide a detail for the proposed erosion control blankets;*

The Stabilization Treatment Detail shows the proposed erosion control blankets (Sheet 7)

- dd. *Clarify the proposed type of erosion control devices to be used at the top of slope A and provide a detail for such devices;*

The Stabilization Treatment Detail shows the proposed erosion control devices at the top of the slope. (Sheet 7)

- ee. *Update the label on Sheet 6 indicating the locations of proposed "erosion control devices" (on Plan Sheets 6 & 7) and the "2.5:1 Stabilization Treatment" detail (Plan Sheet 7) to reflect the proposed types of erosion control devices. Details and labels must match;*

The label describes the location and type of proposed erosion control devices and is consistent with the detail on sheet 7. (Sheet 6) The Stabilization Treatment Detail shows the proposed erosion control devices. (Sheet 7)

- ff. *Provide additional information regarding the proposed use of lots #81L & R (aka #18 & 20 Bittersweet Boulevard); and*

Lot 81L&R is not part of this site plan filing. At this time we have elected to set this lot aside for Open Space. (Sheets 3 through 6)

- gg. *That the proposed curtain drain shall have a minimum 6" diameter pipe.*

The curtain drain shall have a 6" diameter pipe and is labeled on the Stabilization Treatment Detail. (Sheet 7)

3. *Provide a to-scale rendering;*

The building renderings are drawn at a scale of $3/32" = 1'$. (Sheet 8)

4. *That slopes 2.5H:1V or less shall be vegetated (covered with jute mesh and hydroseeded) and shall have existing rock armoring removed;*

I believe that the sum of all the plan changes accomplishes this fact.

5. *That the property lines at the toe of Slope "A" are staked out by a Registered Professional Land Surveyor prior to beginning any work;*

The property line has previously been staked out on several occasions. We shall insure that these stakes are in place and refresh them if necessary. Note #12 on the plan reinforces this requirement. (Sheets 2 through 7)

6. *That where the petitioner is unable to secure access to neighboring properties to allow for reconstruction to the slope to the neighboring property line, re-grading shall begin no further than 5 feet from the property line;*

We will not require access to neighboring properties. All work will take place on our property only.

7. *That appropriate soil erosion and sediment control measures, including but not limited to hay bales and silt fences, shall be installed and maintained throughout construction by the applicant to the satisfaction of the Director of Code Enforcement and that said measure shall be consistent with any Conservation Commission or Massachusetts Department of Environmental Protection conditions placed on the site;*

No comment or plan change necessary.

8. *That all work in public rights-of-way, easements with respect to utilities, and streets conforms to the standards contained in the City of Worcester, Department*

No comment or plan change necessary.

16. *That a certification stating that the slope was installed per the final revised approved plans from the contractor(s) that completes any part of the re-grading of "Slope A" shall be submitted to the DPRS prior to the issuance of any Certificates of Occupancy for the proposed 10 dwelling units.*

No comment or plan change necessary.

In an effort to complete this lengthy review process we took the time to summarize the plan changes as listed above. We kindly ask that all future communications refer to this letter and numbered comments in order to help facilitate the process and eventual approval of the plan. Should you or any of your staff have questions regarding these changes please contact me or Robert H. Gallo directly at 508-829-0676. I can also be reached by e-mail at sgallo@gallobuilders.com. We look forward to completing this part of the process and moving on actual construction of the new slope.

Respectfully,

Steven A. Gallo, PRES.

Steven A. Gallo
President

EXHIBIT 3

DEP
849-979
2015-033

















EXHIBIT 11













